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6 UNITED STATES DISTRICT COURT  
7  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 LEEVURN LYONS,

Case No.

10 Plaintiff,

**COMPLAINT FOR DAMAGES FOR  
VIOLATION OF CIVIL RIGHTS.  
JURY TRIAL DEMANDED**

11 vs.

12 CITY OF OAKLAND, a municipal corporation;  
13 RICHARD WORD, in his capacity as Chief of  
14 Police for the CITY OF OAKLAND; R.  
15 HOLMGREN, individually and in his capacity  
16 as a police officer for the CITY OF OAKLAND;  
17 R. HOLTON, individually and in his capacity as  
18 a police officer for the CITY OF OAKLAND; C.  
19 BUNN, individually and in his capacity as a  
20 police for the CITY OF OAKLAND; S.  
21 MILLINGTON, individually and in his capacity  
22 as a police officer for the CITY OF OAKLAND;  
J. McGUINN, individually and in his capacity as  
a police officer for the CITY OF OAKLAND;  
and DOES 1-25, inclusive, individually and in  
their capacities as police officers for the CITY  
OF OAKLAND,

23 Defendants.

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25 JURISDICTION

26 1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction  
27 is conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1343. The  
28

1 unlawful acts and practices alleged herein occurred in the City of Oakland, County of Alameda,  
2 California, which is within this judicial district.

3  
4 PARTIES

5 2. Plaintiff herein, LEEVURN LYONS, is readily recognizable as an African-American  
6 and was at all times herein mentioned a citizen of the United States residing in Alameda County in  
7 California.

8 3. Defendant City of Oakland ("CITY") is a municipal corporation, duly organized and  
9 existing under the laws of the State of California. The City operates under its authority the Oakland  
10 Police Department.

11 4. At all times mentioned herein, defendant officer R. HOLMGREN ("HOLMGREN")  
12 was employed by defendant CITY as a police officer. He is being sued individually and in his  
13 capacity as a police officer for the CITY.

14 5. At all times mentioned herein, defendant officer R. HOLTON ("HOLTON") was  
15 employed by defendant CITY as a police officer. He is being sued individually and in his capacity as  
16 a police officer for the CITY.

17 6. At all times mentioned herein, defendant officer C. BUNN ("BUNN") was employed  
18 by defendant CITY as a police officer. He is being sued individually and in his capacity as a police  
19 officer for the CITY.

20 7. At all times mentioned herein, defendant officer S. MILLINGTON  
21 ("MILLINGTON") was employed by defendant CITY as a police officer. He is being sued  
22 individually and in his capacity as a police officer for the CITY.

23 8. At all times mentioned herein, defendant officer J. McGUINN ("McGUINN") was  
24 employed by defendant CITY as a police officer. He is being sued individually and in his capacity as  
25 a police officer for the CITY.

26 9. At all times mentioned herein, defendant officers DOES 1-25, inclusive, were  
27 employed by defendant CITY as police officers. They are being sued individually and in their  
28 capacities as police officers for the CITY.



1 Oakland police officers, believed to be defendant officer McGUINN, ran into the home through the  
2 front door and demanded from plaintiff information to locate the suspect or any contraband in the  
3 area. Plaintiff accurately responded that he'd just arrived at the house and didn't have any such  
4 information responsive to defendant officer McGUINN'S interrogation. Defendant officer  
5 McGUINN then began searching the home, although he had received no permission to do so.

6 17. Several of defendant officers then walked to the front door of the home and demanded  
7 that plaintiff let them inside the home. Plaintiff refused to grant defendant officers such permission  
8 and told them that was already one unwanted officer in the house without permission. Defendant  
9 officer HOLMGREN then ordered plaintiff to move out of the way, and emphasized his point by  
10 withdrawing his service revolver. Defendant officer HOLMGREN held his gun at point blank range  
11 to plaintiff's face. Under such coercion, plaintiff complied with the officer's order and stepped aside.  
12 Defendant officer HOLMGREN entered the house so that he and plaintiff were both inside the house.

13 18. Plaintiff asked the officer for an explanation of why they wanted to enter the  
14 residence, but defendant officer HOLMGREN merely responded by telling plaintiff to "shut up."  
15 Plaintiff then asked for the officer to identify himself and produce a search warrant. Defendant  
16 officer HOLMGREN told plaintiff to "get out of my face," and pushed plaintiff onto a couch.  
17 Plaintiff stood back up and told defendant officer HOLMGREN, "So this is what you do to civilians."  
18 At this point plaintiff heard a call come over the officer's radio stating that the pursued suspect had  
19 been captured across the street from plaintiff's location. Defendant officer HOLMGREN then began  
20 walking out of the house.

21 19. Plaintiff asked defendant officer HOLMGREN for his name and badge number.  
22 Defendant officer HOLMGREN walked back to plaintiff, who was standing in his doorway, and  
23 stopped so that he was directly in front of plaintiff. Defendant officer HOLMGREN wore an  
24 Oakland Police Department baseball cap and began repeatedly bumping the brim of the cap  
25 plaintiff's forehead and repeatedly said to plaintiff, apparently rhetorically, "What are you going to  
26 do?" before walking away.

27 20. Plaintiff immediately got a pen and paper from a neighbor and wrote down defendant  
28 officer HOLMGREN's name as it appeared on his jumpsuit. Plaintiff told defendant officer

1 HOLMGREN that he had his name and badge number. Defendant officer HOLMGREN then ordered  
2 another defendant to arrest plaintiff for “assisting a fugitive”. Plaintiff was arrested by defendant  
3 officers and transported to Oakland City Jail. Plaintiff paid \$250 for a bail bond and was released at  
4 approximately 4:00 a.m. that morning. Charges were never filed against plaintiff, who has no  
5 criminal history.

6 21. Defendant officer HOLMGREN subsequently wrote in his police report of the incident  
7 (assuming proper grammar), that he helped to take into custody the suspect they had been pursuing  
8 before violating plaintiff’s civil right, and that the suspect, Rudolph Barker, was apprehended on the  
9 northwest side of 3354 Seminary Avenue. Defendant officer HOLMGREN writes the report in a  
10 manner that indicates Mr. Barker was arrested on the side of the residence where the incident giving  
11 rise to this Complaint arose, however the incident occurred at 3334 Seminary Avenue. Further,  
12 plaintiff heard the call on defendant officer HOLMGREN’s radio that the suspect had been  
13 apprehended at a location down the street from plaintiff and defendant officer HOLMGREN’s  
14 location. Finally, in defendant officer HOLTON’s report of the incident, he writes that Mr. Barker  
15 was taken into custody in front of 3354 Seminary Avenue, which is not the address where this  
16 incident occurred, as noted above, and does not appear to be on the side of any address, but in front of  
17 a residence.

18 22. On information and belief, plaintiff alleges that defendant officer HOLMGREN has  
19 been the subject of prior litigation regarding his use of excessive force, violence, and false arrest.  
20 Plaintiff further alleges that as a result of such litigation, defendant CITY was on notice of defendant  
21 officer’s HOLMGREN’s propensity for engaging in acts of violence against citizens. This arrest of  
22 plaintiff was vindictive and retaliatory in nature, intended to punish plaintiff for asking legitimate  
23 questions regarding defendant officers’ conduct in their pursuit of a fleeing suspect.

#### 24 DAMAGES

25 23. As a proximate result of Defendants’ conduct, Plaintiff suffered pain and physical  
26 injuries, including being assaulted and battered, bruising, and contusions. As a further proximate  
27 result of defendants’ conduct, plaintiff was wrongfully incarcerated for several hours and suffered  
28

1 severe and extreme emotional distress, fear, terror, anxiety, humiliation, and loss of his sense of  
 2 security, dignity, and pride as a United States citizen.

3 24. Plaintiff was assaulted and battered without any just provocation or probable cause, by  
 4 defendant officers and suffered injuries as described herein.

5 25. The conduct of defendant officers was malicious, wanton, and oppressive. Plaintiff is  
 6 therefore entitled to an award of punitive damages against said defendant police officers of the CITY.

7 26. Plaintiff found it necessary to engage the services of private counsel to vindicate his  
 8 rights under the law. Plaintiff is therefore entitled to an award of all attorney's fees incurred in  
 9 relation to this action for violation of his civil rights.

# 10 FIRST CAUSE OF ACTION

11 (42 U.S.C. Section 1983)

12 (Against defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and  
 DOES 1-10, inclusive)

13 27. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through  
 14 26 of this Complaint.

15 28. In doing the acts complained of herein, Defendant officers officers HOLMGREN,  
 16 HOLTON, BUNN, MILLINGTON, McGUINN, and DOES 1-10, inclusive, and/or each of them,  
 17 acted under color of law to deprive plaintiff of certain constitutionally protected rights, including, but  
 18 not limited to:  
 19

- 20 a. The right to be free from unreasonable searches and seizures, as guaranteed by the  
 21 Fourth and Fourteenth Amendments to the United States Constitution;
- 22 b. The right not to be deprived of life or liberty without due process of law, as guaranteed  
 23 by the Fifth and Fourteenth Amendments to the United States Constitution;
- 24 c. The right to be free from the use of excessive force by police officers, which is  
 25 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States  
 26 Constitution;  
 27  
 28

1 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment  
2 to the United States Constitution; and/or,

3 e. The right to be free from interference within the zone of privacy, as protected by the  
4 Fourth and Ninth Amendments to the United States Constitution;  
5

6 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

7 SECOND CAUSE OF ACTION  
8 (42 U.S.C. section 1983)  
9 (Against Defendants CITY, RICHARD WORD, and DOES 11-25)

10 29. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through  
11 28 of this Complaint.

12 30. Plaintiff is informed and believes and thereon alleges that high ranking City of  
13 Oakland officials, including high ranking police supervisors, such as Defendant Richard WORD,  
14 DOES 11 through 25, and/or each of them, knew and/or reasonably should have known about the  
15 repeated acts of misconduct by defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON,  
16 McGUINN, and DOES 1-10, inclusive, and/or each of them.  
17

18 31. Despite having such notice, Plaintiff is informed and believes and thereon alleges that  
19 Defendants WORD, DOES 11-25, and/or each of them, approved, ratified, condoned, encouraged  
20 and/or tacitly authorized the continuing pattern and practice of misconduct and/or civil rights  
21 violations by said officers.  
22

23 32. Plaintiff is further informed and believes and thereon alleges that as a result of the  
24 deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendant police  
25 officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and DOES 1-10, inclusive,  
26 and/or each of them, Defendant WORD, DOES 11-25, and/or each of them, encouraged these  
27  
28

1 officers to continue their course of misconduct, resulting in the violation of the Plaintiff's rights as  
2 alleged herein.

3 33. The aforementioned acts and/or omissions and/or deliberate indifference by high  
4 ranking City of Oakland officials, including high ranking City of Oakland Police Department  
5 supervisors, Defendants WORD, DOES 11-25, and each of them resulted in the deprivation of  
6 Plaintiff's constitutional rights including, but not limited to, the following:  
7

- 8 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
9 and Fourteenth Amendments to the United States Constitution;  
10  
11 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by  
12 the Fifth and Fourteenth Amendments to the United States Constitution;  
13  
14 c. The right to be free from the use of excessive force by police officers, which is  
15 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States  
16 Constitution;  
17  
18 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to  
19 the United States Constitution; and/or,  
20  
21 e. The right to be free from interference with the zone of privacy, as protected by the Fourth  
22 and Ninth Amendments to the United States Constitution;

23 34. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
24 Amendments to the United States Constitution.

25 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

26 THIRD CAUSE OF ACTION  
27 (42 U.S.C. section 1983)  
28 (Against Defendant CITY OF OAKLAND)



1           35. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through  
2 34 of this Complaint.

3           36. As against Defendant CITY, Defendant WORD and/or DOES 11-25 in his/their  
4 capacity as official policy-maker(s) for the CITY OF OAKLAND, Plaintiff further alleges that the  
5 acts and/or omissions alleged in the Complaint herein are indicative and representative of a repeated  
6 course of conduct by members of the CITY OF OAKLAND Police Department tantamount to a  
7 custom, policy or repeated practice of condoning and tacitly encouraging the abuse of police  
8 authority, and disregard for the constitutional rights of citizens.  
9  
10

11           37. Plaintiff is further informed and believes and thereon alleges that the acts and  
12 omissions alleged herein are the direct and proximate result of the deliberate indifference of  
13 Defendants CITY, WORD, DOES 11-25, and each of them, to repeated acts of police misconduct  
14 which were tacitly authorized, encouraged or condoned by the Defendant CITY, Defendant WORD,  
15 DOES 11-25, and each of them.  
16

17           38. The injuries and damages to Plaintiff as alleged herein were the foreseeable and  
18 proximate result of said customs, policies, patterns and/or practices of Defendant CITY, Defendant  
19 WORD, DOES 11-25, and each of them.  
20

21           39. Plaintiff is further informed and believes and thereon alleges that the damages  
22 sustained as alleged herein were the direct and proximate result of municipal customs and/or policies  
23 of deliberate indifference in the training, supervision and/or discipline of members of the Defendant  
24 OAKLAND Police Department.

25           40. Plaintiff is further informed and believes and upon such information and belief alleges  
26 that Plaintiff's damages and injuries were caused by customs, policies, patterns or practices of  
27 Defendant CITY, Defendant WORD, DOES 11-25, and each of them, exhibiting deliberate  
28

1 indifference in the training, supervision and/or discipline of Defendant officers HOLMGREN,  
2 HOLTON, BUNN, MILLINGTON, McGUINN, and DOES 1-10, inclusive, and/or each of them.

3 41. The aforementioned customs, policies or practices of Defendant CITY, Defendant  
4 WORD, DOES 11-25, and each of them, resulted in the deprivation of Plaintiff's constitutional rights  
5 including, but not limited to, the following:  
6

- 7 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth  
8 and Fourteenth Amendments to the United States Constitution;  
9  
10 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by  
11 the Fifth and Fourteenth Amendments to the United States Constitution;  
12  
13 c. The right to be free from the use of excessive force by police officers, which is guaranteed  
14 by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;  
15  
16 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment to  
17 the United States Constitution; and/or,  
18  
19 e. The right to be free from interference with the zone of privacy, as protected by the Fourth  
20 and Ninth Amendments to the United States Constitution.

21 42. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
22 Amendments to the United States Constitution.

23 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

24 **FOURTH CAUSE OF ACTION**  
25 **(Assault and Battery)**  
26 **(Against Defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and**  
27 **DOES 1-10, inclusive)**

28 43. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 42 of this  
Complaint.

1           44. Defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN,  
2 and DOES 1-10, inclusive, placed plaintiff in immediate fear of death and severe bodily harm by  
3 attacking and battering him without any just provocation or cause.  
4

5           . These defendants' conduct was neither privileged nor justified under statute or  
6 common law.

7           45. As a proximate result of defendants' conduct, Plaintiff suffered damages as  
8 hereinafter set forth.

9           WHEREFORE, Plaintiff prays for relief as hereinafter set forth.  
10

11                                   FIFTH CAUSE OF ACTION  
12                                   (Intentional Infliction of Emotional Distress)  
13                                   (Against defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and  
14                                   DOES 1-10, inclusive)

15           46. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 45 of this  
16 Complaint.

17           47. The conduct of Defendant officers HOLMGREN, HOLTON, BUNN,  
18 MILLINGTON, McGUINN, and DOES 1-10, inclusive, as set forth herein, was extreme and  
19 outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic  
20 and civilized society. Defendants committed these extreme and outrageous acts with the intent to  
21 inflict severe mental and emotional distress upon plaintiff.

22           48. As a proximate result of defendants' willful, intentional and malicious conduct,  
23 plaintiffs suffered severe and extreme mental and emotional distress. Therefore, Plaintiff is entitled  
24 to an award of punitive damages as against said defendants. Plaintiff has suffered damages as  
25 hereinafter set forth.  
26

27           WHEREFORE, Plaintiff prays for relief as hereinafter set forth.  
28



1           54. Under the provisions of California Civil Code Section 52(b), Defendants are liable for  
2 each violation of Civil Code Section 51.7 for punitive damages, an additional \$25,000.00, and for  
3 reasonable attorney's fees.

4  
5           55. As a proximate result of defendants' wrongful conduct, plaintiff suffered damages as  
6 hereinafter set forth.

7           WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

8  
9                               EIGHTH CAUSE OF ACTION  
10                              (Violation of Civil Code Section 52.1)  
11           (Against Defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and  
12                              DOES 1-10, inclusive)

13           56. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 55 of this  
14 Complaint.

15           57. The conduct of defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON,  
16 McGUINN, and DOES 1-10, inclusive, inclusive, as described herein, acting in the course and scope  
17 of their employment for defendant CITY, violated California Civil Code Section 52.1, in that they  
18 interfered with plaintiff's exercise and enjoyment of his civil rights, through use of wrongful and  
19 excessive force, and failure to make any proper or reasonable arrest of said plaintiff.

20           58. As a direct and proximate result of defendants' violation of Civil Code Section 52.1,  
21 plaintiff suffered violation of his constitutional rights, and suffered damages as set forth herein.

22           59. Since this conduct occurred in the course and scope of their employment, defendant  
23 CITY is therefore liable to plaintiff pursuant to respondeat superior.

24           60. Plaintiff is entitled to injunctive relief and an award of his reasonable attorney's fees  
25 pursuant to Civil Code Section 52.1(h).

26  
27           WHEREFORE, Plaintiff prays for relief, as hereinafter set forth.  
28

NINTH CAUSE OF ACTION

(Negligence)

(Against Defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and DOES 1-10, inclusive)

61. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 60 of this complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

62. At all times herein mentioned, defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and DOES 1-10, inclusive, were subject to a duty of care to avoid causing unnecessary physical harm and distress to persons through their use of force and making of arrests. The wrongful conduct of defendants, as set forth herein, did not comply with the standard of care to be exercised by reasonable persons, proximately causing plaintiff to suffer injuries and damages as set forth herein. Pursuant to Government Code Section 815.2(a), Defendant CITY is vicariously liable to plaintiff for his injuries and damages suffered as alleged herein, incurred as a proximate result of the aforementioned wrongful conduct of defendants.

63. As a proximate result of defendants' negligent conduct, plaintiff suffered severe physical injury, severe emotional and mental distress, injury having a traumatic effect on Plaintiff's emotional tranquility, and suffered damages.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

TENTH CAUSE OF ACTION

(Negligent Hiring, Retention, Training, Supervision, and Discipline)

(Against Defendants CITY, RICHARD WORD, and DOES 11-25)

64. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 63 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

65. At all times herein mentioned, defendant CITY, by and through its supervisory employees and agents, RICHARD WORD, and DOES 11-25, inclusive, has and had a mandatory duty of care to properly and adequately hire, train, retain, supervise, and discipline its police officers so as to avoid unreasonable risk of harm to citizens. With deliberate indifference, CITY, RICHARD WORD, and DOES 11-25, inclusive, failed to take necessary, proper, or adequate measures in order to prevent the violation of plaintiff's rights and injury to said plaintiff. CITY, RICHARD WORD, and DOES 11-25, inclusive, breached their duty of care to citizens in that CITY, RICHARD WORD, and DOES 11-25, inclusive, failed to adequately train its police officers, including defendant officers HOLMGREN, HOLTON, BUNN, MILLINGTON, McGUINN, and DOES 1-10, inclusive, in the proper and reasonable use of force, the proper and reasonable making of arrests, and treating citizens in a manner that is not racially discriminatory, and/or failed to have adequate policies and procedures regarding the proper and reasonable use of force, the proper and reasonable making of arrests, and treating citizens in a manner that is not racially discriminatory. This lack of adequate supervisorial training, and/or policies and procedures demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying the continuing use of excessive and unreasonable force by police officers employed by CITY, the continuing failure to make proper and reasonable arrests by police officers employed by CITY, and continuing racially discriminatory behavior towards citizens by police officers employed by the CITY.

66. As a proximate result of defendants CITY, RICHARD WORD, and DOES 11-25, inclusive's negligent conduct, plaintiff suffered severe physical injury, severe emotional and mental distress, injury having a traumatic effect on plaintiff's emotional tranquility, and damages.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

#### JURY DEMAND

67. Plaintiff hereby demands a jury trial in this action.

PRAYER

WHEREFORE, Plaintiff prays for relief, as follows:

1. For general damages in a sum of \$100,000.00;
2. For special damages in a sum according to proof;
3. For punitive damages in a sum of \$100,000.00 against defendant officer HOLMGREN;
4. For injunctive relief, pursuant to California Civil Code Section 52.1, enjoining Defendant CITY OF OAKLAND from authorizing, allowing, or ratifying the practice by any police officer employee of Defendant CITY from using excessive and unreasonable force against persons;
5. For violation of California Civil Code Sections 52 and 52.1, statutory damages, and reasonable attorney's fees;
6. For violation of California Civil Code Section 51.7 pursuant to California Civil Code Section 52(b), punitive damages against Defendant police officers, \$25,000.00 for each offense and reasonable attorney's fees;
7. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
8. For cost of suit herein incurred; and
9. For such other and further relief as the Court deems just and proper.

Dated: July 20, 2003

**The Law Offices of John L. Burris**

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John L. Burris  
Attorney for Plaintiff